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Supreme Court of the United States

October Term, 1943.

712
No.

PATRICK HENRY KELLEY,
Petitioner,

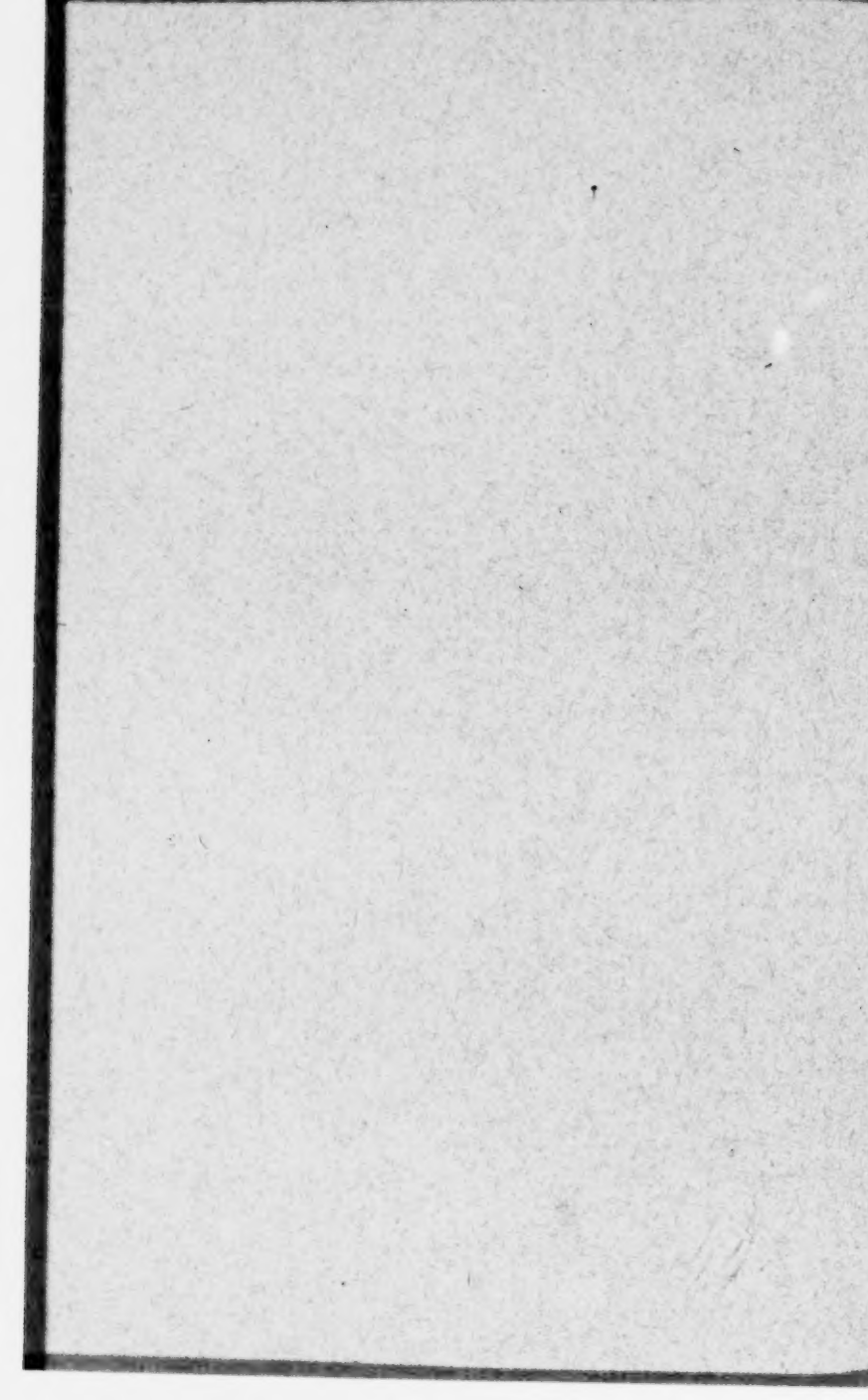
v.

AMERICAN SUGAR REFINING COMPANY,
Respondent.

**BRIEF IN SUPPORT OF PETITION FOR A WRIT OF
CERTIORARI TO THE CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT.**

PATRICK HENRY KELLEY,
Pro se,

DANIEL J. LYNE,
Counsel for Petitioner.



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v.

AMERICAN SUGAR REFINING CO.,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Preliminary Statement.

For a statement of the grounds on which the jurisdiction of this Court is invoked, and a "Statement of the Case", reference is hereby made to the Petition on file herein, Pages 2-11.

Specification of Errors Intended to be Argued.

(1) That the decision in *Kelley v. American Sugar Refining Co.*, 311 Mass. 617, applied by the District Court as authority to sustain the judgment dismissing the Complaint is immaterial, irrelevant and incompetent to restrict or con-

trol the exercise of jurisdiction by the District Court over the Complaint as conferred by the Act of Congress, U. S. Code Title 28, Section 41:(1).

(2) That under the 7th Amendment to the Federal Constitution, the Petitioner had the right to institute, to maintain and to prosecute to a final judgment in the District Court the Complaint and the remedy sought by the mode and process provided by the Common Law, namely, "the right of Trial by a Jury"; that the District Court sitting as a Court of Common Law under jurisdiction as authorized by U. S. Code Title 28, Section 41:(1), (the jurisdiction that was authorized and invoked by the allegations of the Complaint and the remedy sought) had no jurisdiction nor power to issue an injunction nor otherwise take any action under the Equity Jurisdiction of the Court, to restrain the Respondent from exercising control over the management of its internal affairs; that the judgment dismissing the Complaint by the assumption and usurpation of jurisdiction and power as a Court of Equity denied the Petitioner the right of a Common Law trial and a Common Law remedy as secured by the 7th Amendment of the Federal Constitution.

(3) That the equitable jurisdiction and doctrine exercised and applied by the Court in *Rogers v. Guaranty Trust Co.*, 288 U. S. 123, was authorized by the allegations of the bill and the prayers for relief as sought by the Bill of Complaint filed in that case. That neither the allegations of the Complaint nor the remedy sought, invoked the exercise by the District Court of jurisdiction and power as a Court of Equity; and that the decision in *Rogers v. Guaranty Trust Co.*, *supra* as applied by the District Court was unauthorized and in conflict with the provisions of the 7th Amendment to the Federal Constitution.

(4) That the judgment of the District Court was entered in violation of the Petitioner's right to a trial by due process of law, as secured by the 5th Amendment to the Federal Constitution, which required that the District Court should determine the Petitioner's right as set forth and described in the Complaint, by the allegations of the Complaint itself and the remedy sought; whereas and to the contrary the District Court refused the Petitioner a Hearing Trial, and determination of his rights as based on the allegations of his Complaint, and exercised its jurisdiction and power as a Court of Equity by ignoring the allegations of the Complaint and exercising its jurisdiction and power as invoked by the allegations made by the Respondent, the adverse party, in its "Motion to Dismiss", and thereby deprived the Petitioner of a Hearing and Trial of his Complaint by due process of law as secured both by the 5th and 7th Amendments to the Federal Constitution.

(5) That the Doctrine of "*Forum Non Conveniens*" as applied in *Rogers v. Guaranty Trust Co.*, 288 U. S. 123 and as applied to the Complaint filed by the Petitioner, does not authorize the District Court to apply that doctrine to a Complaint when the sole relief and remedy claimed is a judgment for money based on a breach of the contract made between the Petitioner and the Respondent; that the judgment of the District Court to the contrary is in conflict with the provisions of the 7th Amendment and the principles on which the decisions in *Hartford Life Ins. Co. v. Douds*, 261 U. S. 576 and *Broderick v. Rosner*, 294 U. S. 629; 71 L. E. 1100 are based.

(6) That the refusal by the District Court and the Circuit Court of Appeals to ascertain and apply the decisions of the Courts of New Jersey and the applicable statutes of

that State in the determination of the Petitioner's substantive rights as claimed by the Complaint, is in conflict with the decisions of the Supreme Court of the United States and the Rules of Decisions, Section U. S. C. A. 725, as interpreted and applied in the decision in *Erie R. Co. v. Thompson*, 304 U. S. 64, 82.

(7) That the decision in *Kelley v. American Sugar Refining Co.*, 311 Mass. 617, as applied by the District Court, as authority to dismiss the Complaint ought not to be accorded any recognition as authority by the Federal Courts, inasmuch as the said decision is in conflict with the Full Faith and Credit Clause, Art. 4, Sec. 1, of the Federal Constitution as interpreted and applied by the Supreme Court of the United States in *Broderick v. Rosner*, 294 U. S. 629; 71 L. E. 1100.

Argument and Citation of Authorities.

The attention of the Chief Justice and Associates is directed to the following matter, namely, that by reading the "Opinion of the Circuit Court of Appeals", it would be impossible to discover that any issues concerning the rights claimed by the Petitioner and based on the 7th Amendment to the Federal Constitution, and other issues which attacked the validity of the judgment of the District Court and as raised by the questions now presented by the Petition for Certiorari, had ever been brought to the attention of the Circuit Court of Appeals when the motion to dismiss was argued before that Court. That Opinion, it will be seen, is for the greater part devoted to an argument intended to show that the Opinion and Decision of the majority in *Rogers v. Guaranty Trust Co.*, 288 U. S. 123 would in the Opinion of the Circuit Court of Appeals be sustained if the

same facts and issues were again brought before this Court for a decision. The prominence given to this question and the manner in which it has been handled would lead one to believe that the question was of importance to a correct decision of the Petitioner's rights as based on the Complaint; whereas it was entirely irrelevant insofar as the validity of the judgment of the District Court was involved by the grounds on which it was attacked in the brief filed by the Petitioner in the Circuit Court of Appeals.

The Circuit Court of Appeals found it more convenient to discuss the decision in the *Rogers* case and to ignore, step aside, by-pass, and suppress, all mention of the real major issues which with supporting decisions the judgment of the District Court was attacked at the hearing of the Motion to Dismiss in the Court of Appeals.

The Circuit Court of Appeals makes no attempt by anything original to support the majority decision, other than by an oblique argument intended to show that the Dissenting Opinion of Justice Stone in that case has not been adopted in later decisions.

The Petitioner now suggests that the majority decision in *Rogers v. Guaranty Trust Co., supra* is based on the implied assumption, namely, that the bill filed by the Petitioner stated a good ground for equitable relief under the law of New Jersey as against the 525 employees of the American Tobacco Co. who were allottees of shares, which the bill sought to have cancelled although not named as parties, nor within the jurisdiction of the New York Court. It was by indulging in the above assumption, namely that the bill stated a case against those 525 employees, that the majority decision sustained the judgment

dismissing the bill on the ground that the New York District Court could not reach the said allottees by service of process; that the New Jersey Courts by substituted service could get jurisdiction as it had jurisdiction over the subject matter because of the situs of the stock in that State. Your Petitioner contends that if the bill filed in New York had been filed in the New Jersey Chancery that the Chancery Court would have dismissed it against all allottees who were actual "employees" and not officers of the Corporation because of want of equity; and that the bill stated no ground for equitable relief by the Corporation as against any allottees who were actual "employees"; that the bill might have been retained in such case as against all officers of the Corporation. The above result would follow from the fact that by the law of New Jersey the Corporation is the legal representative of the majority that voted to adopt the plan to allot shares to the "employees" as authorized by the statute; that the Corporation and the said majority had full knowledge that the Statute and the plan authorized the allotment of shares to "employees" before the plan was adopted by the required vote of the stockholders. In such case the Chancery of New Jersey would dismiss the Bill for Relief on behalf of the Corporation as against the employees as stating no ground for equitable relief and for want of equity, and if it retained it all it would have done so as against the officers who were alleged to have enriched themselves by allotments which were not disclosed to the stockholders before the stockholders voted for the acceptance of the plan. As the bill was filed by Rogers as Plaintiff on behalf of the Corporation, and not based on his individual rights, his right to relief depended on the right of the Corporation to the relief sought; by this view the Opinion of Justice Stone stands on solid foundation; because, assuming that the

bill would not have been sustained as against the employees by the New Jersey Chancery, there was no necessity for the New York Court to dismiss the bill for want of jurisdiction over shares allotted to the employees, by the Corporation, the stockholders, and the officers.

We next direct the attention of this Court to certain misrepresentations concerning the Petitioner's case as stated in the Opinion of the Circuit Court. The opinion states at Page 26 Record, "The basis of the Plaintiff's determination to vote against the continued existence of the corporation was his belief that the prospective earnings value of the shares was less than their Book Value". This statement is contradicted by the allegations of the Complaint, which states that the Petitioner was given no opportunity to vote for the continued existence of the corporation except on the condition that he surrendered his exclusive right of the value of 4500 dollars in the earned surplus; that the proposed Amendment contained no provision for its distribution conditional upon the acceptance of the Amendment by the vote of the $\frac{2}{3}$ majority necessary to make it effective; that Petitioner refused to surrender his right to the accrued profits earned by his shares because the Amendment as drafted by the management upon such surrender by the Petitioner by voting in favor of the Amendment, thereby authorized the earned surplus to be used to pay dividends on the Preferred Stock after January 10, 1941, as it had been used in 1938 and 1939, and thus the entire earned surplus could be dissipated for the sole benefit of the Preferred Stock; that because the proposed Amendment contained no option permitting its acceptance by the owners of the Common Stock without the forfeiture of rights in the earned surplus, that the Petitioner refused his assent and stood on his legal rights as

fixed by the Articles of Incorporation under which his investment in the Common Stock was made. *Lonsdale Security Corp. vs. International Mercantile Marine Co.*, 101 N. J. Eq. 554.

The next misrepresentation of the Petitioner's case is found in the Opinion, Record Page 26, namely, "The Plaintiff's contention that this suit being one on a Contract does not involve the internal affairs of a Foreign Corporation is without merit. *Cohen v. American Window Glass Co.*, 126 F (2) 111 C. C. A. 2nd 1942".

The action described in the Complaint is based on a written contract to recover a Common Law Judgment for money as damages for its breach. There are no allegations in the Complaint seeking the aid of a Court of Equity—nor requesting the Court to issue any injunction or otherwise take any action to interfere with or control the internal affairs of the Respondent. To the contrary, the case of *Cohen v. American Window Glass Co.*, *supra* was a Bill in Equity requesting the appointment of a Receiver and for the dissolution and winding up of a Pennsylvania Corporation filed in the District Court of New York; and it sought to charge the Directors for the payment of dividends illegally paid. In the argument and citations which will follow, it will be shown that the Petitioner's contention will have the merit at least of being supported by applicable decisions of the Supreme Court of the United States which were ignored by the Circuit Court of Appeals, while the position of the Circuit Court of Appeals in affirming the judgment will have no such foundation to support it, except the legal heresies involved in the judgment of the District Court which were adopted by the Circuit Court of Appeals by ignoring the remedy sought in the Complaint and transformed and converted a common law

action to obtain a Common Law Judgment for money into a Bill in Equity to enjoin the Respondent from exercising control over its internal affairs. The effect and operation intended by the Circuit Court of Appeals in affirming the judgment of the District Court under the above circumstances is an attempt to compel the Petitioner to submit his legal rights to the discretion exercised by the District Court as a Court of Equity, in violation of the Petitioner's rights as secured by the 5th and 7th Amendments to the Federal Constitution and the statute under which the Common Law jurisdiction of the District Court was invoked by the Petitioner.

Argument of the Questions Presented in the Petition for Writ of Certiorari.

POINT 1.

The 7th Amendment provides, "In suits at Common Law where the value in controversy shall exceed Twenty Dollars, the right of Trial by Jury shall be preserved". The phrase "Common Law," as found in the above provisions, is used in contradistinction to Equity Jurisdiction; it applies to rights and remedies purely legal and such as it is proper to ascertain in Courts of Law by the appropriate modes and proceedings of Courts of Law.

Shields v. Thomas, 18 How. 253; 15 L. E. 368.

Parsons v. Bedford, 3 Pet. 432, 446; 7 L. E. 732-736.

POINT 2.

The provisions of the 7th Amendment preserve the right of Jury Trial against any infringement by any department of the Government and *prohibits all Courts of the United States from exercising jurisdiction in equity where the*

remedy is adequate and complete at law. The right to a Common Law trial in suits at Common Law does not depend either on *legislative or judicial discretion.* This provision *prohibits the Courts of the United States from the exercise of Equity Jurisdiction, and discretion over suits at Common Law.*

Smith v. American Nat. Bank, C. C. A. 89, Fed. Rep. 838.

Hodges v. Eaton, 106 U. S. 408; 27 L. E. 169, 171.

Whitehead v. Shattuck, 138 U. S. 146; 34 L. E. 873-874.

Van Norden v. Morton, 99 U. S. 378; 25 L. E. 453.

Smith v. Bourbon County, 127 U. S. 105; 32 L. E. 73, 76.

Cates v. Allen, 149 U. S. 451; 37 L. E. 804.

Springville v. Thomas, 166 U. S. 707; 41 L. E. 1172.

Scott v. Armstrong, 146 U. S. 499; 36 L. E. 1059-1064.

Security Trust Co. v. Black River Bank, 187 U. S. 211; 47 L. E. 147-158.

Johnson v. Langford, 245 U. S. 541; 62 L. E. 460, 463.

Re Sawyer, 124 U. S. 200, 209, 210; 31 L. E. 402, 405.

Scott v. Neeley, 140 U. S. 90.

POINT 3.

The judgment of the District Court as affirmed by the Circuit Court of Appeals is void as a usurpation of equity jurisdiction exercised on the alleged authority of *Rogers v. Guaranty Trust Co.*, 288 U. S. 123. The jurisdiction in the *Rogers* case above cited was exercised by the Court as invoked by the Prayers for Equitable Relief requested by

the Plaintiffs in their Bill in that case; but the District Court had no jurisdiction in Equity over the Complaint which invoked the Common Law Remedy preserved by the 7th Amendment, namely a judgment for 24,500 dollars against the Respondent as requested by Par. 15 of the Complaint. (Record Page 12.) The Complaint sought no relief outside the Common Law.

Re Sawyer, 24 U. S. 200, 209, 210; 31 L. E. 402, 405.

Whitehead v. Shattuck, 138 U. S. 146; 34 L. E. 873 Headnote 2; Headnote 3.

Smith v. Bourbon County, 127 U. S. 105; 32 L. E. 73.

Van Norden v. Morton, 99 U. S. 378; 25 L. E. 453.

Oates v. Allen, 149 U. S. 451; 31 L. E. 804.

Springville v. Thomas, 166 U. S. 107; 41 L. E. 1172.

Security Trust Co. v. Black River Nat. Bank, 187 U. S. 211; 41 L. E. 147 at 158.

Scott v. Armstrong, 46 U. S. 499; 36 L. E. 1059-1064.

Johnson v. Langford, 245 U. S. 541; 62 L. E. 460, 463.

Smith v. American Nat. Bank, C. C. A. 89 Fed. Rep. 838.

Scott v. Neeley, 140 U. S. 109.

POINT 4.

The decision in *Kelley v. American Sugar Refining Co.*, 311 Mass. 617, is irrelevant and incompetent as an authority to restrict, enlarge or otherwise control the jurisdiction of the District Court under U. S. Code Title 28; Section 41(1) as invoked by the Complaint.

Barrow Steamship Co. v. Kane, 170 U. S. 100, 109, 112.

Pusey & Jones Co. v. Hansen, 261 U. S. 491; 67 L. E. 763.

Terrall v. Burke Construction Co., 257 U. S. 529, 531, 532.

Penn General Casualty Co. v. Comm. of Pennsylvania, 294 U. S. 189, 196, 197; 79 L. E. 850, 856.

Neves v. Scott, 13 How. 268; 14 L. E. 140, 142.

McClellan v. Garland, 217 U. S. 268, 281, 282; 54 L. E. 761-767.

Shaun v. Terry, 36 F. 337, 355.

Watertown v. Canal L. B. & T. Co., 215 U. S. 33, 44, 45.

Klein v. Burke Construction Co., 260 U. S. 226, 234; 67 L. E. 226-232.

Farrell v. Stoddard, 1 F. (2) 802.

POINT 5.

The District Court and the Circuit Court of Appeals refused to ascertain and apply the law of New Jersey to determine the Petitioner's rights, on the ground that the questions involved were novel, complicated and difficult; such grounds are insufficient and incompetent to authorize the judgment dismissing the Complaint over a Common Law Action to obtain a judgment for money based on breach of a contract.

Erie R. Co. v. Tompkins, 304 U. S. 64, 82.

Ruhlin v. N. York Life Ins. Co., 304 U. S. 202, 208, 209.

Fidelity Union T. Co. v. Field, 311 U. S. 169-177.

West v. A. T. & T. Co., 311 U. S. 223, 236.

The following extract is from the opinion in *Meredith v. Winter Haven*, 64 Supreme Court Reporter 7; 88 Supreme Court Law Ed. Adv. Op. 1, at page 12 of the Su-

preme Court Reporter, and at page 6 of the Law Ed., Adv. Op.:

"*Erie R. Co. v. Tompkins*, 304 U. S. 64 82 L. E. 1188; 114 A. L. R. 1487, *supra*, did not free the Federal Courts from the duty of deciding questions of state law in diversity cases. Instead it placed on them a greater responsibility for determining and applying state laws in all cases within their jurisdiction which Federal laws do not govern. Accepting this responsibility, as was its duty, this Court has not hesitated to decide questions of state law when necessary for the disposition of a case brought to it for decision, although the highest Court of the state had not answered them, the answers were difficult, and the character of the answers which the highest state courts might ultimately give remained uncertain."

POINT 6.

The judgment dismissing the Complaint illegally converted an action at law into a Bill in Equity to restrain the Respondent from exercising control over its internal affairs as alleged by the adverse party, in its Motion to Dismiss. The Petitioner could not be compelled by this expedient to submit his legal rights to the discretion exercised by the District Court as a Court of Equity.

Broderick vs. Rosner, 294 U. S. 629, 71 L. E. 1100.

Norton vs. Larney, 266 U. S. 511, 516; 69 L. E. 413-416.

Flanders vs. Coleman, 250 U. S. 223; 63 L. E. 948.

Fair vs. Kohler Die Co., 228 U. S. 522, 525; 57 L. E. 716, 717.

Metcalf vs. Watertown, 128 U. S. 586.

Alabama S. S. R. Co. vs. Thompson, 200 U. S. 206, 216, 217, 218; 50 L. E. 441, 446, 447.

POINT 7.

A Common Law Judgment for money entered against the Respondent by a trial on the merits, cannot operate to interfere with the control by the Respondent over its internal affairs. That question is foreclosed.

Hartford Life Insurance Co. v. Douds, 261 U. S. 476, 478, 479; 67 L. E. 754, 756.

The following is from the Opinion (McReynolds, J.) at page 479; 67 L. E. 756:

"By a written contract Petitioner had agreed that no monthly assessment should exceed 2.68 dollars per thousand; it demanded and received more, and respondent sued to recover the excess; all parties came before the Court; the necessary facts were established and he obtained judgment for a definite sum of money. *This cannot interfere with the management of the company's internal affairs.*"

POINT 8.

The defense raised by the Motion to Dismiss which was sustained by the District Court and the Circuit Court of Appeals is denounced by the Courts of New Jersey as fraudulent.

The filing of the Certificate of Amendment as alleged by Par. 9 of the Complaint Record, Page 9, and the Certificate of the Secretary of State that such Certificate had been filed in his office is made conclusive evidence (by the Statutes) in all Courts of the right of the Respondent to exercise its franchise as amended until January 10, 1991. The Judgment of the District Court is based on the claim "that the determination of the Petitioner's right to enforce the

Respondent's contract obligation 'involves the validity of the Respondent's existence as a corporation and the validity of the vote by which it was effected'." The New Jersey Court to the contrary holds "that when power is conferred by a statute to be exercised under stated conditions and it is exercised by complying therewith—that it is a fraud on the statute to seek to escape from legal contract obligations by a defense which assumes its invalidity as exercised and conferred by the statute".

U. S. Industrial Alcohol Co. v. The Distilling Co.,
89 N. J. Eq. at 179.

Conclusion.

For the reasons above stated it is respectfully submitted that a Writ of Certiorari should issue.

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